IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of:

Thomas Edward Uthe and

Jodie Lynn Uthe, Case No. 15-02259-als7

Debtor(s). Chapter 7

MEMORANDUM OF DECISION
(date entered on docket: September 26, 2016)

Before the Court is the Objection to Debtors' Claimed Exemption, filed by Red Haw, Inc. Both parties submitted post-hearing briefs and the matter is now fully submitted. The Court has jurisdiction of this matter under 28 U.S.C. sections 1334, 11 U.S.C. section 522, and Fed. R. Bankr. P. 4003.[1] For the reasons stated here, Red Haw's Objection is overruled and the Debtors' Claim of Exemption is allowed.

BACKGROUND

Tom Uthe and his wife Jodie Uthe are president and vice-president, respectively, of Uthe Farms, Inc. Leland Shelton ("Shelton") is the owner of Red Haw, Inc. ("Red Haw"). It rented farmland to some combination of the Uthes or Uthe Farms, Inc. Shelton is also a licensed real estate agent for Red Haw Realty, LLC, a separate company owned by his son, Todd Shelton.

In 2012, when the Uthes lived in Madrid, Iowa there was some discussion between Shelton and Tom Uthe related to a home on approximately 21 acres that was for sale near

[1] To the extent state law issues are involved and must be addressed both parties consent to this Court's determination of such matters in the context of the Objection to Debtors' Claimed Exemptions. *See Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015).

Chariton in Lucas County Iowa ("Parcel B")[2]. Apparently because they could not afford the purchase price, Shelton offered to have Red Haw, Inc. loan the money to buy Parcel B and the Uthes agreed. The sellers accepted the Uthes' offer.

In anticipation of the closing on the purchase of Parcel B, Todd Shelton of Red Haw Realty contacted Tom Uthe to ask how the real estate should be titled. He was told that Tom and Jodie Uthe would own the property as joint tenants. This information was provided to Attorney Paul Goldsmith who prepared all of the closing documents for the sale. On the morning of August 15, 2012, Shelton took the Uthes to Verle Norris's ("Attorney Norris") office. He was Red Haw's attorney and he instructed the Uthes where to sign the documents he had prepared. In each instance, the Uthes signed as their names appeared in either their personal capacities or corporate capacities on behalf of Uthe Farms, Inc. At the conclusion of this brief meeting the following documents had been executed:

> a) a promissory note in amount of $405,000 loan (the "Note")[3] signed by the Uthes, individually and in their respective capacities on behalf of Uthe Farms, Inc;
> b) a mortgage including three parcels of real estate located in Lucas County, Iowa that was executed on behalf of Uthe Farms, Inc. ("Mortgage");
> c) a security agreement ("Security Agreement") and a hypothecation agreement ("Hypothecation") executed by Tom and Jodie Uthe that pledged property they owned as additional security for the Note.

After executing these documents, the Uthes then went to the office of Kent Farm Management & Real Estate ("Kent Farm Mgmt.") to close on their purchase of Parcel B.

---

[2]Parcel B of the Southwest Quarter of the Southwest Quarter (SW ¼ SW ¼) of Section Number Five (5); and of the Southeast Quarter of the Southeast Quarter (SE ¼ SE ¼) of Section Number Six (6); All in Township Number Seventy-two (72) North, Range Number Twenty-one (21) West of the 5th P.M. in Lucas County, Iowa, more particularly described in Plat of Survey recorded February 6, 2008 in the office of the Lucas County, Iowa, Recorder in Book 6 page 78. Which, according to the real estate closing information sheet, was locally known as 23901 57th St. Lane.

[3]The Note itself does not mention how the loan proceeds are to be used.

Todd Shelton was at the closing to deliver the check from Red Haw for the purchase of Parcel B. A copy of the deed reflecting the Uthes' joint ownership was given to everyone at the time of the closing. No representative of Red Haw was at the closing. Red Haw did not request a final title opinion after the closing of the sale of Parcel B.[4]

In 2014, Red Haw began foreclosure proceedings against all three properties described in the Mortgage. This foreclosure action was resolved by a settlement agreement between the parties. Later, a second foreclosure proceeding against the same three properties was filed. The Uthes filed an answer denying Red Haw's right to foreclose on Parcel B contending the Mortgage is invalid against that particular property. On October 1, 2015, Red Haw asked the Uthes to agree to reform the Mortgage. Soon after declining this request, the Uthes filed a chapter 7 bankruptcy petition and claimed Parcel B exempt as their homestead.

DISCUSSION

There is no dispute that the Mortgage is valid against two parcels of real estate identified in the Mortgage that are owned by Uthe Farms, Inc. The parties' disagreement is strictly limited to Parcel B. Red Haw objects to the Uthes' claim of a homestead exemption and asks this Court to exercise its discretion to reform the Mortgage to include as mortgagors the Uthes in their individual capacities so that an enforceable lien on Parcel B is collateral for its Note.

Reformation is an equitable remedy that may be granted to change a written instrument to reflect the true agreement of the parties when there has been a mutual mistake in the reduction of that agreement to writing. *See Iowa State Bank & Tr. Co. v. Michel*, 683 N.W.2d 95, 107 (Iowa 2004). A court's power to reform a contract must be exercised with the "utmost caution" and can only grant such relief if it is clear that the parties agreed to something different from what is

[4] Alan Umbenhower of Kent Farm Management stated that he sent Attorney Norris an opinion letter. This document was not presented as part of the record.

expressed in writing. The proof on this point should leave no room for doubt. 66 Am. Jur. 2d Reformation of Instruments § 1 (2016). The party seeking reformation

> has the burden of proving by clear, satisfactory, and convincing evidence that the contract does not reflect the true intent of the parties, either because of fraud or duress, mutual mistake of fact, mistake of law, or mistake of one part and fraud or inequitable conduct on the part of the other.

Wellman Sav. Bank v. Adams, 454 N.W.2d 852, 855 (Iowa 1999); *see also Walnut St. Baptist Church v. Oliphant*, 135 N.W.2d 97, 101-02 (Iowa 1965); *Rankin v. Taylor*, 214 N.W. 725, 727 (Iowa 1927). Evidence is "clear and convincing" when there is "no serious or substantial doubt about the correctness of the conclusion drawn from it." *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983). It is under this standard that Red Haw's request for reformation must be considered.

A court cannot just create a contract when there is a dispute between the parties regarding the terms of their agreement. "It is not enough that the parties think that they have made a contract. They must have expressed their intentions in a manner that is capable of being understood." 1 Joseph M. Perillo, Corbin on Contracts § 4.1 (1993). This is generally accomplished by reducing an agreement to writing. In some situations, however, the parties' intent may be unclear or uncertain. In that event, a court may be called upon to determine the parties' intent and interpret the contract accordingly. *NevadaCare, Inc. v. Dep't. of Human Servs*., 783 N.W.2d 459, 466 (Iowa 2010). The parol evidence rule permits evidence of the parties' intentions to be offered to assist in interpreting the meaning of language contained in their written agreement. *See Cline v. Richardson*, 526 N.W.2d 166, 168 (Iowa Ct. App. 1994); *see also Kroblin v. RDR Motels, Inc*., 347 N.W.2d 430, 433 (Iowa 1984) (discussing exceptions to the parol evidence rule). Such extrinsic evidence may include: 1) the situation and relations of

the parties, 2) the subject matter of the transaction, 3) preliminary negotiations and statements made by the parties, and 4) the course of dealing between the parties. *See NevadaCare, Inc.* 783 N.W.2d at 466. "However, the most important evidence of the parties' intentions at the time they entered into the contract is the words of the contract." *Id.* "Great weight" is given to the words and conduct of the parties if the true purpose of their agreement can be ascertained from both of these sources. *Id*. To the extent Red Haw points to any ambiguities in its loan documents, extrinsic evidence can be considered.

1. Mutual Mistake

A mutual mistake is present where both parties to a contract misunderstand the other's intent; or there is a shared mistake that appears in the contract that is relied upon by both parties. *Mutual Mistake, Black's Law Dictionary* (10th ed. 2014). There is no proof of any specific discussion or actual agreement between Red Haw and the Uthes as to how Parcel B would be titled, or what individuals, entities and collateral would be included under the Note and Mortgage. The parties seem to agree that the loan was for the purchase of Parcel B, but the Note itself does not reflect that intention. The lack of communication between the parties related to the purchase of Parcel B and Red Haw's loan is not evidence of a mutual mistake. The following facts are dispositive in reaching this determination.

First, when the Uthes questioned Shelton as to whether they needed to hire an attorney to complete the real estate transaction he informed them that Red Haw's attorney would prepare all the legal documents for the loan transaction so they did not need to retain counsel. Only Red Haw gave the instructions to Attorney Norris for the preparation of all the documents related to its loan transaction. There was no evidence of any conversation between Shelton and the Uthes related to the details of the Mortgage, Security Agreement or Hypothecation Agreement. These

facts are inconsistent with the allegations that the Uthes were parties to a mutual mistake in the preparation of the documents. Second, is Shelton's statement that he told Attorney Norris to make sure the loan was covered "both ways" which he testified as meaning both "business and personal." Any ambiguities arising from this directive in the resulting written documents are properly construed against Red Haw. *See Oliphant*, 135 N.W.2d at 101. Red Haw did obtain security "both ways" under the Note it was just not done in a manner that effectively secured Parcel B. The Uthes did secure the Note with their personal property and a lake property under the Security and Hypothecation Agreements. Third, is the admission by the Uthes that they would have signed the Mortgage as individuals had they been directed to do so, and that they were generally aware that Red Haw would not "just give" them the money to purchase Parcel B. These statements simply support an intent to obtain the loan not how and what specific property would be used to secure its repayment. The loan documents, as prepared, did not result in an unsecured loan. Collateral was pledged by both Uthe Farms, Inc. and the Uthes as security for the Note. Finally, Red Haw's efforts to be listed on the insurance policy covering Parcel B does not establish a mutual mistake in the loan contracts and is not evidence that it held an enforceable lien under its Mortgage.

The evidence in this case simply does not meet the standard required and demonstrated in other cases where reformation was granted. *See, e.g., US Bank, N.A. v. Smith*, 470 S.W.3d 17, 26-28 (Mo. Ct. App. 2015) (holding that the plaintiff presented "clear, cogent and convincing evidence" that both parties were in agreement as to the terms of the loan and therefore, reformation was appropriate for the mutual mistake); *Neb. State Bank v. Pedersen*, 234 Neb. 499 (Neb. 1990) (holding that the clear and convincing evidence standard was met because "there was no other reason for [defendants] to sign the mortgage other than to be mortgagors").

Red Haw also contends that the failure to include the correct signatories on the Mortgage is the result of a scrivener's error. A scrivener's error arises where a single isolated provision of a contract describes a party or property that would render the provision disjointed with the overall contract as well as the clear intention of the parties. *See Wilmes v. Tiernay*, 174 N.W. 271, 271 (Iowa 1919) (finding a scrivener's error where single clause of testamentary instrument clearly was intended to describe "northwest" section of land rather than "northeast"); *Newton v. Kula*, 152 N.W. 496, 497 (Iowa 1915) (finding the word "me" instead of "him" in one sentence of an otherwise correctly drafted mortgage instrument to be a clear scrivener's error); *Deutsche Bank Nat. Trust Co. v. Roslewicz*, C.A. No. 5922-ML, 2014 WL 4559101 (Del. Ch. June 3, 2014) (holding that inclusion of name on deed when parties clearly intended not to include it was scrivener's error). Applying the theory of scrivener's error as the basis for reformation would not serve to resolve any confusion in the terms of the Mortgage as written. Rather, it would result in substantive changes and an expansion of remedies available under the Mortgage terms.

Red Haw argues that any mistake necessarily includes some sort of negligence which does not preclude reformation of a contract. While this statement may be true, any error, whether arising from negligence or carelessness, did not render the Mortgage ambiguous or "disjointed." Shelton admitted that he only verified the amount reflected on the Note and that he did not otherwise review or read any of the other loan documents for accuracy. Under a typical agreement involving a promissory note secured by a mortgage, the only benefit contemplated for the mortgagor is the receipt of the funds used to purchase the property. *See Fed. Land Bank of Omaha v. Woods*, 480 N.W.2d 61, 67 (Iowa 1992). Promissory notes, standing on their own, are valid contracts. *Id.* at 66. "Simply put, the mortgage is for the benefit of the [lender], not the borrower. If the [lender] chooses not to be concerned about the value of the collateral or the

validity of the borrower's interest in the collateral, that is a risk the [lender] takes." *Id.* at 67-68. The Uthes also stated that they did not review or read any of the documents. While it is not advisable to sign legal documents without reading them, it is not appropriate to impose a requirement or a standard higher than Red Haw's to the Uthes. *See Gouge v. McNamara*, 586 N.W.2d 710, 713 (Iowa Ct. Ap. 1998) (holding "(i)gnorance of the contents of an instrument does not ordinarily affect the liability of one who signs it").

Red Haw has failed to meet its burden to prove by clear and convincing evidence that the Mortgage is subject to reformation on the grounds of mutual mistake or scrivener's error.

2. Fraud

Reformation may be granted where one party has induced the agreement through actual fraud. *See Oliphant*, 135 N.W.2d at 102. A party claiming fraud must prove that: (1) the defendant made an actual representation to the claimant, which was both (2) false and (3) material; (4) the defendant knew the representation was false, and (5) intended to deceive the claimant; (6) the claimant justifiably relied on the representation; and (7) the representation was a proximate cause of (8) the claimant's actual damages. *Dier v. Peters*, 815 N.W.2d 1, 7 (Iowa 2012) (quoting *Spreitzer v. Hawkeye State Bank*, 779 N.W.2d 726, 735 (Iowa 2009)). Red Haw bears the burden to prove each of these elements by "a preponderance of clear, satisfactory, and convincing" evidence. *Id.* (quoting *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 233 (Iowa 2004)).

The first three elements are established by the record. By signing the Mortgage on behalf of Uthe Farms, Inc., the Uthes made a representation that the corporation owned clear title to all three parcels of property described in the Mortgage. Because that was incorrect, or untrue, Red Haw's ability to enforce collection against some of the collateral securing its Note was materially

affected. The fourth element requires that the representation be made with knowledge, or in reckless disregard of its possible falsity. *Id.* at 8.

There is no proof that the Uthes knew their representation was false or that it was made in reckless disregard of the truth. The representations made on behalf of Uthe Farms, Inc. were never called to their attention. Neither Red Haw, nor Attorney Norris, asked the Uthes how the real estate would be titled and nothing in the record leads to a conclusion that the Uthes would not have correctly reported this information. They simply signed the documents as prepared for their signatures.

To determine whether a misrepresentation was justifiably relied on, relevant factors include: the claimant's access to relevant information; whether the alleged fraud was concealed; whether the claimant had the opportunity to detect the alleged fraud; whether the claimant initiated or sought to expedite the transaction; and the specificity of the misrepresentation. *See Spreitzer*, 779 N.W.2d at 737. While the representation clause in the Mortgage specifically warrants that the Parcel B is owned by Uthe Farms, Inc., the fact that the deed was being prepared for the Uthes in their personal capacities was unconcealed and the information was readily available to Red Haw from any number of sources.

A fraudulent representation is the proximate cause of a claimant's damages if the fraudulent conduct increased the risk of the claimed damage. *Spreitzer*, 779 N.W.2d at 741. While Red Haw's security on the loan is weakened by the failure to properly secure Parcel B under the Mortgage, Red Haw has not sufficiently demonstrated that Uthe Farms, Inc.'s misrepresentation of title was the proximate cause of this damage. It is equally plausible to conclude the proximate cause of Red Haw's damages is the result of faulty preparation of the Mortgage.

A common law claim of fraud requires more than a showing of a misrepresentation. Red Haw has failed to meet it burden to establish the remaining elements and therefore reformation of the Mortgage on the grounds of fraud is denied.

3. Unjust Enrichment

Unjust enrichment is an equitable principle which prevents a party from receiving property or benefits at the expense of another party without compensation for them. *Johnson v. Dodgen*, 451 N.W.2d 168, 175 (Iowa 1990). The theory of unjust enrichment "does not give a court a 'roving mandate' to adjust every perceived unfairness." See In re Petersen, 273 B.R. 586, 593 (Bankr. N.D. Iowa 2002) (citation omitted). A party may be unjustly benefited in a situation where the other party has performed his or her part of an actual agreement that turns out to be unenforceable as a matter of contract. *See* Restatement (Third) of Restitution and Unjust Enrichment § 31 (Am. Law. Inst. 2011) (hereinafter "Restatement"). When parties merely negotiate, however, without reaching firm conclusions, and one side then performs some version of the agreement he was hoping for, the other party cannot be said to be unjustly enriched. Ward Farnsworth, Restitution: Civil Liability for Unjust Enrichment 79 (2014); *see also* Restatement § 12 cmt. e ("Equity is asked to relieve a condition, not a state of mind.").

Under Iowa law, a party asserting unjust enrichment must prove: (1) the defendant was enriched by receipt of a benefit not contemplated by the parties' agreement; (2) the benefit was at the claimant's expense; and (3) it would be unjust to allow the defendant to retain the benefit in the circumstances. *State Dept. of Human Servs. ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 154-55 (Iowa 2001). Recovery under unjust enrichment is not based on some benefit of which the claimant has been deprived, but rather the claimant must demonstrate the defendant has unjustly gained a benefit not contemplated by the agreement itself. *See id.* at 151. "Iowa

courts seem especially reluctant to find 'unjust enrichment' when parties have voluntarily placed themselves in a situation or have failed to take action to put themselves in a better situation." *In re Petersen*, 273 B.R. at 593.

There is no evidence of any discussion, let alone any agreement reached, with Red Haw about whether the Uthes would be acting in their corporate or personal capacities in the purchase of Parcel B. Neither party adequately explains why or how the inconsistency between the ownership of Parcel B and the Mortgage developed. When asked by Red Haw Realty, LLC, Tom Uthe stated that Parcel B would be owned by his wife and him, personally. Leland Shelton instructed his counsel to have the property secured "both ways." The record contains no evidence that the Uthes and Red Haw discussed how Parcel B would be titled for purposes of including it as collateral for the Note.

Red Haw's failure to adequately explain the terms of the parties' agreement to Attorney Norris, or take action after the closing to verify ownership of Parcel B was done at its own risk. The contracts executed by Uthe Farms, Inc., and the Uthes are not invalid or unenforceable. The Mortgage prepared on Red Haw's behalf is legally enforceable against Uthe Farms, Inc. and the real estate it owns. The Note, Security Agreement and Hypothecation Agreement executed by the Uthes, individually, also remain enforceable against the assets pledged. No unenforceable contracts resulted from the execution of the loan documents. Instead, the loan documents simply preclude Red Haw from enforcing its mortgage against Parcel B which was not induced or caused by any action on the part of the Uthes.

Red Haw's request for relief based upon unjust enrichment is denied.

4. Homestead Exemption Waiver

Red Haw also urges the Court to consider the homestead waiver as a basis for its request for relief. The exact reasoning for this argument is not clear. The Uthes did not secure Parcel B in their personal capacity as they were not parties to the Mortgage as individuals, and therefore the mortgage instrument cannot be enforced against them, personally. The only party to the mortgage is Uthe Farms, Inc. which is not the owner of Parcel B and holds no authority to waive any homestead exemption rights on behalf of the Uthes. The result being that the homestead waiver is either unenforceable or irrelevant as to both the Uthes and Uthe Farms, Inc.

To the extent Red Haw is suggesting that because the homestead waiver language appears in the Mortgage, that the parties intended that Parcel B was to be included in that document, that argument is misplaced. There has been no showing that Red Haw and the Uthes agreed to, or intended, any specific information to appear in the documents. According to the record, Red Haw provided the information to its counsel and instructed that the documents be prepared "both ways." The record contains no evidence of any discussion that would have supplied additional details related to the transaction so a determination of why the waiver language was included in the Mortgage cannot be reached. Based upon the facts of this case the homestead waiver language in the Mortgage does not constitute an ambiguity in that contract.

Having failed to establish that the mortgage is subject to reformation under the theories of mutual mistake, scrivener's error, fraud, and unjust enrichment, the validity of the homestead exemption waiver need not be addressed further.

Conclusion

Based upon the foregoing, IT IS HEREBYORDERED that:

1. Red Haw's request to reform the Mortgage is denied.

2. Red Haw's objection to the Debtor's Claim of Exemption in Parcel B is overruled.

3. Parcel B is allowed as exempt to the Debtors.

/s/ Anita L. Shodeen
Anita L. Shodeen
U.S. Bankruptcy Judge

Parties receiving this Memorandum of Decision from the Clerk of Court:
Electronic Filers in this Chapter Case